

FILED IN
CLERK'S OFFICE
STATE OF INDIANA) IN THE LAKE CIRCUIT/SUPERIOR COURT
COUNTY OF LAKE)
CAUSE NO. 45C010610P100443

THOMAS R. PHILPOT
CLERK LAKE CIRCUIT COURT

STATE OF INDIANA,)

Plaintiff,)

v.)

GEOFFREY BOTMAN and)

MARY BOTMAN,)

Defendants.)

CERTIFIED MAIL/

POST MARKED 10-3-06

**COMPLAINT FOR INJUNCTION,
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).

2. At all times relevant to this Complaint, the Defendants, Geoffrey Botman and Mary Botman, were regularly engaged in the sale of items via the Internet from their principal place of business in Lake County, located at 6817 Rhode Island, Apt. 3, Hammond, Indiana, 46323.

FACTS

3. Since at least February 11, 2005, the Defendants have entered into contracts with Indiana consumers for the sale of items via the internet.

A. Allegations regarding Aaron C. Hardin's Consumer Transaction.

4. On or around January 25, 2006, the Defendants entered into a contract with Aaron C. Hardin ("Hardin") of Boston, Kentucky, wherein the Defendants represented they would sell Chevy Silverado seats to Hardin for a total price of Nine Hundred Seventy-One Dollars and Sixty-Six Cents (\$971.66), which Hardin paid.

5. On or about Wednesday, January 25, 2006, the Defendants E-mailed Hardin and stated, "I received the money order today and your seats will be shipped out within 2 weeks."

6. On or about Tuesday, January 31, 2006, the Defendants E-mailed Hardin and stated, "I'm so sorry about taking so long to get the seats out . . . They will be out by Monday guaranteed."

7. After complaining to eBay regarding the length of time the Defendants were taking to ship the seats, the Defendants E-mailed Hardin and stated, "No, now that you have left me negative feedback I am not going to ship the seats, I will send you a full refund if you cancel the complaint but the seats are out of the question."

8. The Defendants further stated in their E-mail, "This is ridiculous but if you want your money back, I will send it back. Just cancel the complaint."

9. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the sale they would deliver the seats within a reasonable period of time.

10. After canceling his order and requesting a refund, the Defendants sent Hardin Two Hundred Dollars (\$200.00) as a partial refund.

11. After submitting a complaint to eBay, Hardin received a partial refund of Three Hundred and Fifty Dollars (\$350.00).

12. As of today, the Defendants have yet to either deliver the Chevy Silverado seats, or to provide a full refund to Hardin.

B. Allegations regarding Lewis Shaw's Consumer Transaction.

13. On or around February 2, 2006, the Defendants entered into a contract with Lewis Shaw ("Shaw") of Elk, Washington, wherein the Defendants represented they would sell new Chevy GMC 1500 power door panels with motors to Shaw for a total price of Three Hundred and Eighty-Seven Dollars and Fifty Cents (\$387.50), which Shaw paid.

14. Upon receiving the door panels, Shaw learned the door panels were not in the new condition the Defendants had represented.

15. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the sale they would deliver the door panels, as represented, within a reasonable period of time.

16. The Defendants have yet to either deliver the door panels in the represented condition, or to provide a refund to Shaw.

COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

17. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 16 above.

18. The transactions referred to in paragraphs 4 and 13 are "consumer transactions" as defined by Ind. Code § 24-5-0.5-2(a)(1).

19. The Defendants are "suppliers" as defined by Ind. Code § 24-5-0.5-2(a)(3).

20. The Defendants' representations to consumers they would sell items to consumers, when the Defendants knew or reasonably should have known the consumers would not receive the items as represented, or any other such benefit, as referenced in paragraphs 4 and 13, constitute violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

21. The Defendants' representation to Shaw the door panels were of a particular standard, quality, grade, style, or model, when the Defendants knew or reasonably should have known they were not, as referenced in paragraph 13, constitutes a violation of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(2).

22. The Defendants' representation to Shaw the door panels were new, when the Defendants knew or reasonably should have known they were not, as referenced in paragraph 13, constitutes a violation of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(3).

23. The Defendants' representation to Hardin they would issue a refund, when the Defendants knew or reasonably should have known the transaction did not have any such rights or remedies, as referenced in paragraphs 7 and 8, constitute violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(8).

24. The Defendants' representation to consumers the Defendants would deliver the items, issue a refund, or otherwise complete the subject matter of the consumer transactions within a reasonable period of time, when the Defendants knew or reasonably should have known they would not, as referenced in paragraphs 5, 6, 8, 9, and 15, constitutes a violation of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

25. The Defendants' representations to consumers they would be able to purchase the items as advertised by the Defendants, when the Defendants did not intend to sell the items as represented, as referenced in paragraphs 4 and 13, constitute violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(11).

**COUNT II – KNOWING AND INTENTIONAL VIOLATIONS OF
THE DECEPTIVE CONSUMER SALES ACT**

26. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 25 above.

27. The misrepresentations and deceptive acts set forth in paragraphs 4, 5, 6, 7, 8, 9, 13, and 15 above were committed by the Defendants with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendants, Geoffrey Botman and Mary Botman, enjoining the Defendants from the following:

- a. representing, expressly or by implication, the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have, which the Defendants know or reasonably should know it does not have;
- b. representing, expressly or by implication, the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the Defendants know or reasonably should know it is not;
- c. representing, expressly or by implication, the subject of a consumer transaction is new or unused, if it is not and if the Defendants know or reasonably should know it is not;
- d. representing, expressly or by implication, the consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the Defendants know or reasonably should know the representation is false;
- e. representing, expressly or by implication, the Defendants are able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendants know or reasonably should know they cannot; and

- f. representing, expressly or by implication, the consumer will be able to purchase the subject of a consumer transaction as advertised by the Defendants, when the Defendants do not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendants for the following relief:

- a. cancellation of the Defendants' unlawful contracts with consumers, including but not limited to, Aaron C. Hardin and Lewis Shaw, pursuant to Ind. Code § 24-5-0.5-4(d);
- b. consumer restitution, pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers for the purchase of items from the Defendant, including but not limited to, Aaron C. Hardin and Lewis Shaw, in an amount to be determined at trial;
- c. costs, pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. on Count II of the Plaintiff's complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-4(g), for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;